

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 4 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARSHALL E. MIKELS,

No. 16-15602

Plaintiff-Appellant,

D.C. No. 3:12-cv-00056-EMC

v.

MEMORANDUM*

JAN ESTEP; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

Submitted September 26, 2017**

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

Marshall E. Mikels appeals pro se from the district court's order denying his post-judgment motion for relief from the district court's order dismissing his action alleging violations of the Truth in Lending Act ("TILA") and other claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's denial of a Federal Rule of Civil Procedure 60(b) motion. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004). We affirm.

The district court did not abuse its discretion by construing Mikels's motion to vacate as a Rule 60(b) motion and denying it because Mikels failed to file the motion "within a reasonable time." Fed. R. Civ. P. 60(c)(1); *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981) (setting forth factors to determine whether a Rule 60(b) motion was filed within a "reasonable time").

Appellees' motion for judicial notice (Docket Entry No. 50) is denied as unnecessary.

AFFIRMED.